

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
Public Service Cellular, Inc.)	
Petition For Designation as an)	
Eligible Telecommunications)	
Carrier In the State of Georgia)	

**COMMENTS OF THE
CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION**

The Cellular Telecommunications & Internet Association ("CTIA")¹ hereby submits its comments in the above captioned proceeding in support of the Petition for Eligible Telecommunications Carrier ("ETC") designation in the State of Georgia filed by Public Service Cellular, Inc. ("PSC").²

INTRODUCTION

On September 23, 2003, PSC filed a petition ("PSC Petition") seeking ETC designation for: (1) portions of its licensed service area in Georgia served by two *non-rural* local exchange carriers -- BellSouth Telecommunications, Inc. ("BellSouth") and ALLTEL Georgia, Inc., and 2)

¹ CTIA is the international organization of the wireless communications industry for both wireless carriers and manufacturers. Membership in the association covers all Commercial Mobile Radio Service ("CMRS") providers and manufacturers, including cellular, broadband PCS, ESMR, as well as providers and manufacturers of wireless data services and products.

² *Wireline Competition Bureau Seeks Comment on the Petition of Public Service Cellular, Inc. for Designation as an Eligible Telecommunications Carrier in the State of Georgia*, Public Notice, CC Docket No. 96-45, DA 03-3731 (rel. Nov. 20, 2003); *see also* Public Service Cellular, Inc. for Designation as an Eligible Telecommunications Carrier in Georgia, 69 Fed. Reg. 4156-57 (Jan. 28, 2004) (setting February 9, 2004, comment date).

portions of its licensed service area in Georgia served by PSC's commonly-owned, affiliate rural telephone company, Public Service Telephone Company ("PSTC"). Consistent with CTIA's position in earlier comments, CTIA supports PSC's Petition, which demonstrates that PSC meets the requirements for designation as an ETC. Section 214(e)(6) provides for ETC designation of carriers not subject to state commission jurisdiction. Specifically, Section 214(e)(6) states, in relevant part:

In the case of a common carrier providing telephone exchange service and exchange access that is not subject to the jurisdiction of a State commission, the Commission shall upon request designate such a common carrier that meets the 2 requirements of paragraph (1) as an eligible telecommunications carrier for a service area designated by the Commission consistent with applicable federal and State law.³

Furthermore, as a commercial mobile radio service ("CMRS") provider that will offer a basic universal service package to subscribers who are eligible for Lifeline support, the FCC has the authority to grant ETC status to PSC pursuant to 47 U.S.C. Sections 214(e)(3) and (e)(6).

DISCUSSION

A. PSC Is Not Subject To the Jurisdiction of the Georgia Public Service Commission

Pursuant to Section 214(e)(6), the Commission shall designate as an ETC a common carrier providing telephone exchange service and exchange access service that is not subject to the jurisdiction of a State commission, so long as the carrier otherwise meets the Act's requirements. The Commission has held that wireless carriers provide exchange access service: "[M]any CMRS providers (specifically cellular, broadband PCS and covered SMR) also provide

³ 47 U.S.C. §214(e)(6). *See also Procedures for FCC Designation of Eligible Telecommunications Carriers Pursuant to Section 214(e)(6) of the Communications Act, Public Notice*, 12 FCC Rcd 22947 (1997).

telephone exchange service and exchange access as defined by the 1996 Act.”⁴ The Commission has also stated that a carrier may demonstrate that it “is not subject to the jurisdiction of a state commission” by providing an “affirmative statement” from the state commission or a court of competent jurisdiction that the state lacks jurisdiction to perform the designation.⁵ The Georgia PSC has issued an affirmative statement that it lacks jurisdiction over ETC designations for CMRS providers.⁶ Specifically, the Georgia PSC has stated that it “does not exercise jurisdiction over Commercial Mobile Radio Service providers for purposes of making determinations concerning eligibility for Eligible Telecommunications Carrier designations under 47 U.S.C. Section 214(e) and 47 C.F.R. Section 54.203 *et seq.*”⁷

B. PSC Offers All Of the Services Supported by Universal Service Support Mechanisms

PSC addressed the nine services and functionalities identified in the Commission’s rules, 47 C.F.R. 54.101(a), that are the core services to be offered by an ETC and supported by federal universal service support mechanisms.⁸ PSC’s universal service offering will be provided in its requested service area in Georgia over its existing cellular

⁴ *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order*, CC Docket 96-98, at ¶1012. *See also id.* at ¶1004 (“Congress recognized that some CMRS providers offer telephone exchange and exchange access services”).

⁵ *See Federal-State Joint Board on Universal Service; Promoting Deployment and Subscribership in Unserved and Underserved Areas, Including Tribal and Insular Areas, Twelfth Report and Order, and Further Notice of Proposed Rulemaking*, 15 FCC Rcd 12208, 12264 (2000).

⁶ *See* PSC Petition at Exhibit 2 (attaching August 6, 2003, letter from Robert B. Baker, Jr., Chairman of the Georgia Public Service Commission).

⁷ *Id.*

⁸ *See* PSC Petition at 9-13.

network infrastructure and spectrum, including the same antenna, cell-site, tower, trunking, mobile switching, and interconnection facilities used to serve existing mobile cellular service subscribers.⁹ PSC further states that it will advertise its new universal service offering to ensure that consumers within the designated service areas in Georgia are aware of the service.¹⁰ Accordingly, PSC has satisfied the requirements of Sections 254 and 214(e)(1)(A) of the Communications Act of 1934 and Section 54.101(a) of the Commission’s rules regarding ETC eligibility.

C. Designating PSC as an ETC Will Advance The Public Interest

CTIA agrees with PSC that a grant of PSC’s application will serve the public interest by bringing the benefits of competition to an underserved marketplace and bring new advanced telecommunications services to consumers in Georgia.¹¹ In addition, designation of CMRS providers, such as PSC, is consistent with the principal goals of the universal service program and provides unique benefits to consumers in rural and other high-cost areas.

It is now well established that wireless carriers can bring significant benefits to the universal service program. One of the principal goals of the Telecommunications Act of 1996 was to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies.”¹² In granting ETC status to CMRS carriers, the Commission has found that “[d]esignation of competitive ETCs promotes

⁹ *See id.* at 14.

¹⁰ *See id.*

¹¹ *See id.* at 14-17.

¹² Telecommunications Act of 1996, Public Law No. 104-104, 100 Stat. 56 (1996).

competition and benefits consumers in rural and high-cost areas by increasing customer choice, innovative services, and new technologies.”¹³

The Commission has also found that CMRS ETC designations provide substantial benefits to “consumers in cases where they do not have access to a wireline telephone.”¹⁴ In the *Virginia Cellular Order*, the Commission stated that “the mobility of telecommunications assists consumers in rural areas who often must drive significant distances to places of employment, stores, schools, and other critical community locations.”¹⁵ Furthermore, the Commission also recognized the critical public safety role that wireless services can provide in rural and insular areas by noting that “the availability of a wireless universal service offering provides access to emergency services that can mitigate the unique risks of geographic isolation associated with living in rural communities.”¹⁶

In this case, PSC has committed to use available federal high-cost support for its intended purposes – the construction, maintenance and upgrading of facilities serving the high-cost and rural areas for which support is intended. Accordingly, designating PSC as an ETC in covered areas in the State of Georgia would serve the public interest by increasing the availability of new, competitively-priced services and technologies in high-cost and rural communities.

¹³ *Western Wireless Corporation*, 16 FCC Rcd 48, 55 (2000) (hereinafter “*Wyoming Order*”), *aff’d*, 16 FCC Rcd 19144, 19151 (2001).

¹⁴ *Virginia Cellular, LLC Petition for Designation as an Eligible Telecommunications Carrier in the Commonwealth of Virginia, Memorandum Opinion and Order*, CC Docket No. 96-45, FCC 03-338, at ¶ 29 (rel. Jan. 22, 2004) (hereinafter “*Virginia Cellular Order*”).

¹⁵ *Id.*

¹⁶ *Id.*

CONCLUSION

For the foregoing reasons, the Commission should exercise its authority to grant ETC status to PSC for its requested service territories in the State of Georgia.

Respectfully submitted,

 /s/ Christopher R. Day

CELLULAR TELECOMMUNICATIONS & INTERNET ASSOCIATION

1400 16th Street, N.W.
Suite 600
Washington, D.C. 20036
(202) 785-0081

Michael Altschul
Senior Vice President & General Counsel

Christopher R. Day
Staff Counsel

Its Attorneys

Dated: February 9, 2004